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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,831	12/15/2004	Takashi Shiraishi	2004-1744A	8721

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WENDEROTH, LIND & PONACK, L.L.P.
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WASHINGTON, DC 20006-1021

EXAMINER

KERSHTEYN, IGOR

ART UNIT	PAPER NUMBER
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3745

MAIL DATE	DELIVERY MODE
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09/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/517,831	Applicant(s) SHIRAISHI ET AL.	
	Examiner Igor Kershteyn	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-10 is/are allowed.
- 6) ☒ Claim(s) 1, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/15/2004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, in line 4, recites "a ring assembly comprising a drive ring, lever plate, etc." which renders the claim indefinite because it is not known what else included in the embodiment of the ring assembly.

Claim 11 characterizes the invention as "A method" however they fail to recite any steps of the method; instead they recite the apparatus structure of the invention.

Claim 12 is indefinite by virtue of it's dependency on claim 11.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3745

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, as far as it is definite, is rejected under 35 U.S.C. 102(b) as being anticipated by Fleury (4,804,316).

In figures 1-11, Fleury teaches an exhaust turbocharger of variable turbine capacity in which the driving force of an actuator is transmitted to nozzle vanes 34, 134 supported for rotation by a nozzle mount 42 through a ring assembly comprising a drive ring, lever plate, etc. to vary the angle of blade of the nozzle vanes by a variable-nozzle mechanism, wherein the second supporting part 86 is provided on the nozzle mount for supporting for rotation said drive ring when the abrasion loss of said supporting part reaches a predetermined amount.

Claim 1, as far as it is definite, is rejected under 35 U.S.C. 102(b) as being anticipated by Birmann (2,428,830).

In figures 3-4, Birmann teaches an exhaust turbocharger of variable turbine capacity in which the driving force of an actuator is transmitted to nozzle vanes 76 supported for rotation by a nozzle mount 124 through a ring assembly comprising a drive ring, lever plate, etc. to vary the angle of blade of the nozzle vanes by a variable-nozzle mechanism, wherein the second supporting part 134 is provided on the nozzle mount for supporting for rotation said drive ring when the abrasion loss of said supporting part reaches a predetermined amount.

Allowable Subject Matter

Claims 2-10 are allowed.

Claims 11-12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Prior Art

Prior art made of record but not relied upon is considered pertinent to Applicant's disclosure and consist of two patents.

Yoshimura et al. (6,471,470) is cited to show a vane adjustment mechanism having a nozzle plate, nozzle mounts and a nozzle support but fails to teach thrust bearings.

Jinnai et al. (6,669,442) is cited to show a vane adjustment mechanism having a nozzle plate, nozzle mounts and a nozzle support but fails to teach thrust bearings.

Contact information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kershteyn whose telephone number is **(571)272-4817**. The examiner can be reached on Monday-Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on **(571)272-4820**. The fax number is 571-273-8300.

Art Unit: 3745

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is

(703) 308 0861.

IK

August 28, 2007

A handwritten signature in black ink, appearing to read 'Igor Kershteyn', written in a cursive style.

**IGOR KERSHTEYN
PRIMARY EXAMINER**

**Igor Kershteyn
Primary Patent examiner.
Art Unit 3745**